



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,894	05/14/2007	Rudolf Dunajtschik	102132-33	9928
27388	7590	07/01/2010	EXAMINER	
Hildebrand, Christa			ROLLAND, ALEX A	
Norris McLaughlin & Marcus PA				
875 Third Avenue, 8th Floor			ART UNIT	
New York, NY 10022			PAPER NUMBER	
			1712	
			MAIL DATE	
			DELIVERY MODE	
			07/01/2010	
			PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/566,894	Applicant(s) DUNAJTSCHIK ET AL.	
	Examiner ALEX ROLLAND	Art Unit 1712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-50 is/are pending in the application.
- 4a) Of the above claim(s) 33-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-32 and 50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5/21/08, 2/01/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I, claims 26-32 and 50, in the reply filed on 6/22/10 is acknowledged. The traversal is on the ground(s) that no search burden exists. This is not found persuasive because search burden is not an element of a restriction requirement under PCT.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 33-49 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 6/22/10.

Claim Objections

3. Claim 50 is objected to because of the following informalities: claim 50 appears twice. Appropriate correction is required.

4. Based on the response to the restriction requirement, it appears that the first claim 50 was intended to be amended to the second claim 50. In order to expedite prosecution, the second claim 50 is treated as the desired claim 50 and is examined accordingly.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 26-29, 50 are rejected under 35 U.S.C. 102(b) as being anticipated by US 2787978 to Faerber.

Claim 26-28:

Faerber teaches a machine and method for coating jubes or jellies with sugar (col. 1, lines 15-19). The machine consists of a drum mounted on a frame for rotation on a horizontal axis (col. 1, lines 47-49). A cylinder having open ends is mounted in the drum for rotation therewith (col. 1, lines 54-56). One or more spiral ribs fixed on the internal wall of the cylinder are set to cause jubes deposited in the inlet end of the cylinder to travel through it and fall from the outlet end (col. 1, lines 60-63). Means are provided to cause sugar to fall into the cylinder in order to coat the jubes (col. 1, lines 63-65). It is desirable to replenish the sugar to order to allow the process to be continuous (col. 2, lines 6-10). The spiral ribs inherently cause the jubes to be divided into individual charges as the space between the ribs are individual, separate processing chambers. The recitation of “dragee-making apparatus” is met by Faerber because it comprises the structural elements required of a dragee-making apparatus; i.e. a rotatably driven drum and a means for coating a product.

Art Unit: 1712

Claim 29:

The machine provides spraying, powdering, and distribution of the coating by coating the jubes with sugar provided by a hopper (col. 2, lines 58-66) and dried by exposing the moistened jubes (col. 1, lines 36-38) to open air (Fig. 2).

Claim 50:

The jubes are subjected to a water spray from a steam heater prior to entering the drum (col. 3, lines 6-7).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

Art Unit: 1712

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 30-32 rejected under 35 U.S.C. 103(a) as being unpatentable over US 2787978 to Faerber in view of US 2336298 to Rubens et al.

Faerber is discussed above but fails to disclose adjusting the size of the processing chambers or adjusting the transport speed of the jubes through the drum. However, Rubens teaches an apparatus for coating bakery products with dry powdery sugar (col. 1, lines 1-8). The coating takes place in a drum having strips of flexible material attached to the interior of the drum (col. 3, lines 56-66) and may be given the shape of a spiral (col. 4, lines 12-28). The flexible material is capable of being further adjusted in order to increase or decrease the degree of spiral in order to vary the capacity of the drum without changing its speed of rotation (col. 1, lines 32-37). This increasing or decreasing the spiral adjusts the size and shape of the area between the flexible strips and therefore adjusts the volume and axial length of the individual processing chambers. Additionally, the spiral adjustment controls the gravitational progression of the articles passing through the machine (i.e. the transport speed) (col. 4, lines 58-61). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the adjustable ribs of Rubens into Faerber in order to

Art Unit: 1712

achieve additional control over the coating process and to be able to adjust the transport speed of the articles without changing the rotational speed of the drum.

Conclusion

11. No Claims are allowed. All pending claims are rejected for the reasons set forth above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALEX ROLLAND whose telephone number is (571)270-5355. The examiner can normally be reached on Monday through Friday, 9:00 a.m. to 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Cleveland can be reached on (571)272-1418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1712

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Frederick J. Parker/
Primary Examiner, Art Unit 1715

/ALEX ROLLAND/
Examiner, Art Unit 1712